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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,495	10/30/2003	Alain Blanc	FR920020068US1	7696
26675 7590 12/27/2006 DRIGGS, HOGG & FRY CO. L.P.A. 38500 CHARDON ROAD DEPT. IRA WILLOUGBY HILLS, OH 44094			EXAMINER CORRIELUS, JEAN B	
			ART UNIT	PAPER NUMBER
			2611	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/27/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/697,495

Applicant(s)

BLANC ET AL.

Examiner

Jean B. Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-8 are objected to because of the following informalities: the claims should be indented.

Claim 1, line 8, "XOR" should be replaced by "XORing". In addition, the claim uses "operation" "step" and "act" interchangeably, it is suggested that the claim be amended to replace "operation, step and act" by a single term preferably "step". In addition, the claim uses interchangeably "partial result" and "partial value", the claim should be amended to either use "partial result" or "partial value" not both; line 8, "the result" should be replaced by "a result" and "partial" should be replaced by "said partial" to make use of antecedent in line 4; line 11, "by the" should be replaced by "by a"; line 11 "OR" should be replaced by "ORing"; last two lines, the results associated with the first and second positions are the results of the ORing steps not partial results. Hence such limitation must be amended in such a way as to recite that the results of the ORing steps of the first and second rotator positions are combined. The same comment applies to claim 2, last two lines, and claim 3, lines 1-2, i. e. "combining said partial results".

Claim 3, lines 18-19 recites repeating the last four acts suggesting that acts of "merging step, ending said combining step, decreasing said bit position, setting said phase rotator position" are repeated. Is this accurate?

Claim 3, line 21 recites "repeating the last five acts" suggesting that acts of "merging step, ending said combining step, decreasing said bit position, setting said phase rotator

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position and increasing the phase rotator by one", as recited in the claim are repeated.

Is this accurate?

The limitation, recited in lines 18-19, i.e. "repeating the last five acts" is not consistent with the specification page 14, lines 25-30 that recites that the last four steps are repeated or otherwise the process terminates. Such section of the specification does not teach however that last five acts are repeated. The claim should be amended in such a way as to be consistent with the specification. Note that any claim whose base claim is objected is likewise objected.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, last two lines "combining said (partial) results associated to said first and second positions". Such limitation is vague and indefinite because, each time in the loop, a previous value associated to said phase rotator position is replaced by a current value of an ORing operation. In other words, at the combining step, the result associated with the first position is no longer present since it was replaced by the result associated with the second position. Line 7, "said sample" lacks of proper antecedent basis.

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In addition, a goal to "analyzing the quality of a high speed signal" is set forth in the preamble. However, the body of the claim does not include any limitations or steps directed to "analyzing the quality of a high speed signal". It is unclear how the intended goal is met.

Claim 3, lines 18-19, recites "repeating the last four acts", however, it is unclear whether the steps (acts) of suggesting that the acts of setting a bit position, setting a phase rotator position, selecting and merging or the steps of merging, ending, decreasing and setting are repeated. Note any claim whose base claim is rejected is likewise rejected.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the step of **combining the results of the first and second bit positions, as recited in the claims** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,990,418.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because claim(s) 1-4 of issue patent contain(s) every element of claim(s) 1, 2, 3 and 6 of the instant application, respectively, and as such anticipate(s) claim(s) 1-3 and 6 of the instant application. "A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

As per claim 4, it would have been obvious to one skill in the art to take several hundreds of sampling for each position of said phase rotator so as to ensure that enough samples are taken to enable reconstruction of the original signal.

As per claim 5, it would have been obvious to one skill in the art to correct the value characterized the quality of the high speed signal in order to remove any dependencies such as bit error from the data signal so as to ensure that the reconstructed signal is as close as possible to the original signal.

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As per claim 7, it would have been obvious to one skill in the art to map the value represented the quality of the high speed signal in such a way as to replaced a "0" by a "-" and a "1" by "X" in order to enhance signal detection.


As per claim 8, it would have been obvious to one skill in the art to analyze the behavior of the phase rotator according to the high speed signal in order to adapt the phase rotator to match changes that occurs in the high speed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean B. Corrielus whose telephone number is 571-272-3020. The examiner can normally be reached on Maxi-Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jean B Corrielus
Primary Examiner
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12-21-06